UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,996	01/19/2007	James Colthurst	4295-00022	7023

26753 7590 09/10/2007

ANDRUS, SCEALES, STARKE & SAWALL, LLP
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI 53202

EXAMINER	
PATTON, AMANDA K	

ART UNIT	PAPER NUMBER
3762	

MAIL DATE	DELIVERY MODE
09/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/563,996	COLTHURST, JAMES	
	Examiner	Art Unit	
	Amanda Patton	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *23-44* is/are pending in the application.

4a) Of the above claim(s) *35-43* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *23,24,26,28-31,33,34 and 44* is/are rejected.

7)☒ Claim(s) *25,27 and 32* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 January 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/19/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 35-43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected groups 2 and 3, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 23, 2007.

Currently, claims 23-34 and 44 are pending in this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 26 recites the limitation "t_1 and t_2" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 23, 24, 28-31, 33, 34, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kairis (EP 0 145 176) in view of Masopust (US Pat. 5,339,827).

Regarding **claims 23 and 33**, Kairis teaches a treatment device comprising (e.g. Figure 1,2; Page 4, line 20 – page 6, line 25): a pair of electrodes 2a and 2b; a pulse generator 12; a detector 2; an integrated circuit 5 responsive to the detector output signals; LEDs 13a to 13e and speaker 6 activated by the monitoring means capable of generating a first indication in the form of the LEDs when a predetermined level of responsivity is reach and a second indication from the LEDs that the treatment is finished (e.g. page 10, lines 30-35). Kairis does not teach a waveform generator capable of repeatedly generating an AC waveform for applying electrical impulses though the electrodes to the skin. Masopust teaches that it is known in the art to use AC waveforms to apply electrical impulses through electrodes to the skin to measure impedance (e.g. Col. 2, lines 50-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the treatment device of Kairis to include a waveform generator capable of creating AC waveforms as taught by Masopust, since such a modification would provide the treatment device of Kairis with the capability of producing AC waveforms for providing the predictable results of more accurate impedance measurement (e.g. Col. 2, lines 20-30).

Regarding **claim 24**, Kairis discloses the claimed invention except a means responsive to the detector output signal for producing output data representing the responsivity of different zones of a pre-determined area of the body, a store for the output data, and means for selecting a treatment zone from amongst the different zones based on an evaluation of the output data to select the zone of greatest responsivity. Masopust teaches a PC 50 and screen 51 for producing

output data representing the responsivity of different zones, computer memory 52 for storage of the output data, and means for selecting a treatment zone from amongst the different zones based on an evaluation of the output data to select the zone of greatest responsivity (e.g. Figures 1, 6-8; Col. 5 line 1 – Col. 6 line 70). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the treatment device as taught by Kairis with the creation, storage, and use of output data of Masopust for providing the predictable result of a system capable of more accurately determining acupuncture points.

Regarding **claim 28**, neither Kairis nor Masupost disclose a treatment device in which the AC waveform is a decaying sinusoidal waveform. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Kairis and Masupost with a decaying sinusoidal waveform, since it was known in the art that a decaying sinusoidal waveform is used to provide the predictable results of a more accurate impedance measurement device. Additionally, the locating of initial amplitude V_{peak}, half wavelength t_1, and decay t_{decay} on a decaying sinusoidal waveform are also well known in the art.

Regarding **claim 29**, Kairis additionally teaches that the pulse frequency, and thus the repetition rate, can be variably set by the user (e.g. page 6).

Regarding **claims 30 and 31**, Kairis disclose the claimed invention including a comparator inherently located in IC circuit 5 that allows switch 3 to be automatically turned on to apply voltage through the electrodes when a low-resistance point is located. If the device of Kairis is to be automatically turned on when a low-resistance point is located, there must be an inherent threshold located in the device. Kairis does not disclose a detector for generating output pulses whose duration is determined by the threshold level. Masupost teaches that it is known in

the art to have output pulses whose duration is determined by the threshold level and represents skin impedance, as the frequency of the pulses is inversely proportional to the impedance (e.g. Col. 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system as taught by Kairis with output pulses whose duration is determined by the threshold level and represents skin impedance, since such a modification would provide the system with output pulses for providing the predictable results of a more accurate way to determine impedance.

Regarding **claim 34**, Kairis additionally teaches device powered by battery 7 (e.g. page 4, lines 30-35).

Regarding **claim 44**, Kairis discloses the method of treating a living body through the skin, comprising the steps of (e.g. Figure 1,2; Page 4, line 20 – page 6, line 25): placing a pair of electrodes 2a and 2b in contact with the skin; generating a waveform to supply electrical impulses though the electrodes to the skin a pulse generator 12; detecting changes in the skin impedance through sensor 2; monitoring the responsivity of the skin through integrated circuit 5; and indicating through LEDs 13a to 13e and speaker 6 a first indication in the form of the LEDs when a predetermined level of responsivity is reach and a second indication from the LEDs that the treatment is finished (e.g. page 10, lines 30-35). Kairis does not teach a waveform generator capable of repeatedly generating an AC waveform for applying electrical impulses though the electrodes to the skin or generating output signals representing the skin impedance. Masopust teaches that it is known in the art to use AC waveforms to apply electrical impulses through electrodes to the skin to measure impedance (e.g. Col. 2, lines 50-40) and PC 50 and screen 51 for generating output data representing the skin impedance. It would have been obvious to one

of ordinary skill in the art at the time the invention was made to modify the treatment device of Kairis to include a waveform generator capable of creating AC waveforms as taught by Masopust, since such a modification would provide the treatment device of Kairis with the capability of producing AC waveforms for providing the predictable results of more accurate impedance measurement (e.g. Col. 2, lines 20-30).

Allowable Subject Matter

Claims 25, 27 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Nowhere in the art of record does the monitoring means measure the duration of the output pulse created by the detector.

Claim 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ishikawa (US Pat. 4,018,670) and Shalvi (US Pat. 5,251,637).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Patton whose telephone number is (571) 270-1912. The examiner can normally be reached on Monday - Friday, 8:30am - 5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AKP/
AKP
8/30/2007

GEORGE R. EVANISKO
PRIMARY EXAMINER
9/17